

Memorandum

Aug 31, 2018

To: Board Member, Irish Beach Water District

From: Matthew Emrick, General Counsel

Re: Water License for Pomo Lake

The purpose of this memorandum is to provide some general background information about the action filed by the Irish Beach Improvement Club (“IBIC”) with the State Water Resources Control Board (“SWRCB”). IBIC’s action seeks to gain ownership of the District’s License for Pomo Lake (“License”), which has been owned by the District for more than 40 years. Below is a brief discussion of the importance of having the Water District retain ownership of the license, because of its benefits to the Water District, IBIC and the Community.

1. The License at issue provides an important public benefit in the form of a water supply for fire protection purposes for the entire Irish Beach community as well as adjacent areas. There are many important reasons why the Water District is the owner of the License and why the Water District should remain the owner of the License including

-Public Safety and Public Benefit. Given the changing nature of wildfires in California, and given the fact that IBIC recently informed the Water District that it does not have adequate funding for capital improvements to the dam and lake (and no mechanism to properly raise such funding), the Water District sees this as a critical public safety issue, the Water District has a variety of mechanisms available to it to raise proper funding for Capital Improvements and Capital Replacements for the Dam and Pomo Lake. Many of these funding mechanisms are not available to IBIC because it is a private non-profit club.

-Grants: The Water District has the ability (with priority in certain cases as a public agency) to obtain grant funding for fire protection related purposes, which in fact the Water District is currently involved in obtaining. The Water District is in the process of preparing a wildfire protection plan that will include protecting the Water District’s water supply sources for fire protection.

-Protection from Financial Liability: One of the benefits of having the Irish Beach Water District retaining ownership of the License is that the community is better protected from potential financial

liabilities resulting from certain unforeseen events. The Water District is a public agency, and as such, has immunities from certain issues under the law, which better protects the community from certain potential financial liabilities.

-The Water District serves all community members: The Water District serves the entire community not just members of IBIC. All residents of the Water District are the beneficial owners of the License, which is held in trust for the entire community by the Water District. All residents of the Water District are eligible to attend the Water District's meetings, obtain public documents, run for office, and to have public input into the decision-making process.

-IBIC as a private club is likely prohibited from owning the License: IBIC is likely prevented from owning any diversionary water right in the Water District's service territory by a multitude of state and local laws and public dedications including but not limited to the anti-duplication of services statutes. This is true whether the SWRCB finds IBIC to be the owner of the License or not. For example, as a general rule, water for public fire protection purposes must be provided by either a public agency or a public utility - in part to ensure proper funding is available to safeguard public safety. IBIC is a non-profit mutual benefit corporation and not a public agency or a public utility.

2. The Water District attempted for several months to work with IBIC on Pomo Lake issues including during several open public meetings. The Water District made several proposals to resolve certain issues, and IBIC rejected these proposals contending that the only outcome IBIC would consider was ownership of the License by IBIC. The Water District was in fact still attempting to negotiate a possible resolution in July 2018, when IBIC filed its action with the SWRCB.

3. IBIC filed its action with the SWRCB without providing any notice to the Water District. To this day, IBIC has not provided the Water District with any of the specific information IBIC provided to the SWRCB.

4. Upon finally learning of IBIC's action to gain ownership of the Water District's License, the Water District asked IBIC to withdraw the matter from the SWRCB, but IBIC refused. Given the importance that the License remain with the Water District for the benefit and safety of the community, and given IBIC's refusal to withdraw its action, the Water District had little choice but to file its own action in Sacramento Superior Court to defend the Water District's ownership of its License for the benefit of the entire Irish Beach community.